Attorney General
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Robert K. Corbin

August 1, 1983

H. Martin Osmus, Assistant State Engineer
Arizona Department of Transportation
Highways Division
206 S. Seventeenth Avenue
Phoenix, Arizona 85007

Re: I83-088 (R83-065)

Dear Mr. Osmus:

You have requested an opinion from this office regarding the jurisdiction of the State of Arizona to enforce the provisions of A.R.S. §§ 28-2101 through 28-2110 relating to outdoor advertising along rights-of-way that cross Indian reservations.

With reference to your opinion request, we have investigated both the factual and legal aspects. Our investigation reveals that the problem is confined to a nineteen-mile stretch of Interstate 40 which runs from the New Mexico state line southwesterly to the town of Sanders, Arizona. This nineteen-mile stretch contains outdoor advertising signs that do not conform to the Arizona Highway Beautification Act, Control of Outdoor Advertising (A.R.S. §§ 28-2101 et seq.).

This area wherein the signs are located was brought within the exterior boundaries of the Navajo Reservation by an act of Congress dated June 14, 1934 (48 Stat. 960). The act, in addition to extending the reservation boundaries, provided for a voluntary exchange of patented land within the reservation addition for land without, and appropriated funds for the Navajo Tribe to purchase patented land within the area as it became available. Presently, there remain some patented lands that lie adjacent to Interstate 40, upon which are located the outdoor advertising signs.

The Arizona Highway Beautification Act was enacted on May 16, 1970. The act contains no provision that extends its jurisdiction to Indian reservation or federal enclaves within the State of Arizona. (For an example of such authorization see A.R.S. § 36-1801 wherein the Abatement of Air Pollution Act is applicable on Indian lands pursuant to a congressional grant of authority, 18 U.S.C.A. § 1162, 38 U.S.C.A. § 1360).

Prior to the State act, the federal government enacted P.L. 89-285, Highway Beautification Act of 1965, Control of Outdoor Advertising (79 Stat. 1028) 23 U.S.C. 131. The federal act does not grant to individual states the authority or jurisdiction to regulate outdoor advertising on federal lands or reservations. The federal act specifically reserves that right to the Secretary of Interior.

23 U.S.C. 131(h) provides:

> All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

The Congress of the United States has exclusive control of Indian reservations unless it specifically grants authority to the states. Absent a specific grant of authority, the state has no jurisdiction to enforce its laws against Indians who are members of the tribe occupying the reservation. Hallowell v. United States, 221 U.S. 317, (1911); Hamilton v. McDonald, 503 F.2d 1138 (9th Cir. 1974).

In addition to the Federal law, the Navajo Tribal Council in 1957 adopted a resolution providing for the control of outdoor advertising. See, Navajo Tribal Code, § 15 at 901-915. The territorial jurisdiction of the Navajo Tribal Ordinances are contained in N.T.C. § 3 providing at 134:

> (a) The territorial jurisdiction of the Navajo Tribe, and of the Navajo Tribal Courts shall extend to and include Navajo "Indian Country".
>
> (b) For the purpose of this section, the term Navajo "Indian Country" shall be defined as and shall include all land within

> the exterior boundaries of the Navajo Reservation as the same may exist from time to time, including rights-of-way and fee land within such boundaries, all land included within the exterior boundaries of the Eastern Navajo Agency, land management districts 15, 16 and 19, all land not included above administered by the Federal Indian Service for the benefit of dependent Navajo Indian communities all lands owned in fee or leased by the Navajo Tribe of Indians, and all land not otherwise mentioned herein included within the definitions of the territorial jurisdiction of the Navajo Tribal Courts provided in the Resolution of December 18, 1945, and Resolutions CO-69-58 and CJA-5-59.

The resolution of the Navajo Tribe and the Tribe's territorial jurisdiction clearly expresses their intent on controlling outdoor advertising on the nineteen mile stretch that lies within the exterior boundaries of the reservation jurisdiction regardless of the issuance of any patents. An attempt by the State of Arizona to apply its Control of Outdoor Advertising Act would, under the existing case law, arguably constitute an unlawful infringement on the right of the Navajo Indians to make their own laws and be ruled by them. Williams v. Lee, 358 U.S. 218, (1959); Merrill v. Turtle, 413 F.2d 683 (9th Cir. 1969).

From the foregoing, it is apparent that Congress and the Supreme Court decisions have preempted the State act from application on the Navajo Reservation. In order to fully respond to your question, however, it is necessary to further determine if the patented land within the exterior boundaries of the Navajo Reservation is a part of the Reservation, so as to be subject to the federal or tribal law, to the exclusion of the State of Arizona.

The jurisdiction and control of the federal government for both criminal and civil law within Indian reservations is defined as extending to and including "Indian Country". The term "Indian Country" is defined in 18 U.S.C. § 1151 as follows:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian Country", as used in this chapter, means (a) all land within the limits of any Indian

> reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (Emphasis added)

With regard to this statute, the Court in DeCoteau v. District County Court for Tenth Jud. Dist., 420 U.S. 525, (1975), reh. den. 421 U.S. 939, reasoned that:

> While § 1151 is concerned, on its face, only with criminal jurisdiction, the Court has recognized that it generally applies as well to questions of civil jurisdiction. [citations omitted] 420 U.S. at 427, n. 2

Because the outdoor advertising signs are located within the exterior boundaries of the reservation, i.e., Indian country, they are subject to federal and tribal control. Arizona law does not apply even though the signs are located on fee-patented land rather than reservation land.

In this regard, it was held in Ashcroft v. U.S. Dept. of Interior, 679 F.2d 196 (9th Cir. 1982), that businesses conducted on non-Indian fee land within the exterior boundaries of the Navajo Reservation are subject to licensing under the Indian trader statutes, 25 U.S.C. §§ 261 et seq. It was recognized that to apply different standards (and the possibility of infringing on the tribe's right to make their own laws) to the scattered tracts of fee-patented lands that happen to be located within the exterior boundaries of the reservation would only frustrate existing federal statutory law and tribal ordinances. Additionally, in Battese v. Apache County, 129 Ariz. 295, 630 P.2d 1027 (1981), the Arizona Supreme Court considered the legality of an exemption from property tax for two Indians residing on fee-patented land within the exterior boundaries of the Navajo Indian Reservation. The court determined that in its interpretation of the language of the

Navajo treaty statutes and relevant case law that the following properly described an Indian reservation:

> . . .[T]o describe the lands which have been reserved to the Indians and accordingly removed from State jurisdiction, includes reservation lands; "Indian property, property within the exterior boundaries of a reservation", "property within the limits of a reservation", and "Indian Country". . . 630 P.2d 1029 (Emphasis added)

In 1953 Congress enacted Public Law 280, 67 Stat. 588, conferring civil and criminal jurisdiction upon those states which were willing to assume responsibility for the Indians. The jurisdiction extended to "Indian Country" as previously defined. The State of Arizona has not assumed such jurisdiction under P.L. 280. Morgan v. Colorado Indian Tribe, 7 Ariz. App. 92, 436 P.2d 484 (1968).

Absent such assumption, or a specific grant from Congress, the State of Arizona does not have jurisdiction to enforce its Highway Beautification Act, Control of Outdoor Advertising within the Navajo Reservation which includes the patented land within its exterior boundaries.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

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